

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
REPLY BRIEF**



74-2049

To be argued by:  
DAVID NEUBAUER

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service

UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

UNITED STATES OF AMERICA,  
Plaintiff-appellee

-against-

PUI LEONG LAM,  
Defendant-appellant.

DOCKET NO. 74-2049

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DEFENDANT'S BRIEF

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UNITED STATES COURT OF APPEALS  
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Plaintiff-Appellee

DOCKET NO. 74-2049

-against-

PUI LEONG LAM,

Defendant-Appellant.

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DEFENDANT-APPELLANT'S BRIEF

FACTS

Defendant-appellant PUI LEONG LAM, was indicted by a Grand Jury for the Southern District of New York (United States of America v. Pui Leong Lam and Pui Kan Lam, 74 Cr. 312), said indictment being duly filed with the Clerk of the Court, Southern District of New York on March 28, 1974.

The indictment charged that the defendant-appellant, Pui Leong Lam, together with his brother Pui Kan Lam with conspiracy to violate Federal Narcotics Law (count one of the indictment) and to intentionally and knowingly distribute and possess and possess with intention to distribute Schedule I and Schedule II narcotic controlled substances, to wit, heroin, (count two of the indictment) violations of Sections 812, 841(a) (i) and 841(b) (1) (A) and 846 of Title 21, United States Code.

That the defendant-appellant Pui Leong Lam was already in Federal custody at Lewisberg, having previously been convicted in the Eastern District of New York for violation of Title 21,

Narcotics Law (Count One of the indictment) and to intentionally and knowingly distribute and possess with intention to distribute Schedule I and Schedule II, narcotic controlled substances, to wit, heroin, (Count Two of the indictment) violations of Sections 812, 841(a)(1) and 841(b)(1)(A) and 846 of Title 21, United States Code.

At the time of the indictment in question Pui Leong Lam and his brother Pui Kan Lam were already in Federal Custody at Lewisberg, Pennsylvania, having been previously convicted in the Eastern District of New York for violation of Title 21, United States Code, Section 841(a)(1); Title 18, United States Code, Section 2, for knowingly, intentionally and unlawfully possessing with intent to distribute a Schedule I narcotic drug controlled substance, (United States of America v. Pui Kan Lam, Pui Leung Lam (sic), Wai Kwok Yip and Wai Kwon Yip, 72 Cr. 852). After a trial by jury before the late Judge Rosaling, U.S.D.J., the defendant-appellant and the co-defendant's were convicted. The defendant-appellant received a sentence of 10 (ten) years in prison and five years special parole. The defendant-appellant had been in custody of Federal authorities since his arrest late in June 1972.

Following the indictment by the Grand Jury both the defendant-appellant and his brother were brought up from Lewisberg for their trial in the Southern District. Upon their initial appearance in Court before the Hon. Charles H. Tenney, U.S.D.J., not guilty pleas were entered for them and counsel assigned for trial, pursuant to statute.

The defendant-appellant appeared for trial before the Hon. Fredrick vanP. Bryan, U.S.D.J., represented by David Blackstone, Esq., 325 Broadway, New York, N.Y. 10013, on May 7, 1974. Upon advice of

of counsel, the defendanant-appellant waived his right to a trial by jury. Immediately thereafter a non-jury trial was commenced before the Hon. Frederick vanP. Bryan. At this time the government moved to dismiss their case against the co-defendant Pui Kan Lam, the motion was granted and the charges against Pui Kan Lam were dismissed on May 7,1974.

Upon hearing all the evidence after a trial lasting three days the Hon. Frederick vanP. Bryan found the defendant-appellant guilty on May 9,1974, of Count I of the indictment and acquitted him on Count II of the indictment. June 20,1974, was set as the date for the sentencing of the defendant-appellant,however, this date was adjourned to June 27,1974.

On June 27,1974, the defendant-appellant appeared before Judge Bryan for sentencing accompanied by his counsel David Blackstone, Esq.,thereafter the efendant-appellant was sentenced to a term of 8 (eight) years in prison with 3 (three) years special parole pursuant to the provisions of Title 21, United States Code. This judgment was modified from an original sentence of 8 (eight) years 6(six) months in prison with 3 (three) years special parole so that the defenant's sentence would expire at the same time that his original 10 year term would be completed.

The defendant-appellant thereupon filed a notice of appeal on July 26,1974, from the judgment and sentence of the District Court. The notice of appeal being filed for him by David Neubauer, Esq., 25 Broadway, New York, N.Y. 10004, who had replaced David Blackstone, Esq. On August 19,1974, David

Neubauer, Esq., was appointed by the United States Court of Appeals for the Second circuit to represent the defendant-appellant in this appeal.

#### POINT ONE

THE DECISION OF THE TRIAL COURT SHOULD BE REVERSED SINCE THE UNITED STATES HAS BEEN UNABLE TO PROVE THE DEFENDANT-APPELLANT GUILTY BEYOND A REASONABLE DOUBT.

The case against Pui Leong Lam is basically one of credibility of witnesses. The United States produced Agent Lowery Leong of the Drug Enforcement Administration and two felons, Guan Chow Tok alias Mr. Woo, a convicted wholesale distributor of narcotics, who was serving a term of seven years and faced a possible additional sentence of fifteen years in this case, and Chun Yin Chiu, a drug user, an informer, and a convict in New Jersey, who had been supplied with narcotics by Mr. Tok.

The conspiracy case rested, however, not on the testimony of Agent Leong, but on the testimony of Chiu and Tok. It is respectfully pointed out to this Court that both Chiu and Tok had a vested interest in the correct outcome of the trial. It is difficult to believe that either one of these gentlemen were testifying against the defendant-appellant out of remorse, righteous wrath or altruistic reason, instead they exchanged testimony for consideration. The consideration obviously being that the government would attempt to lighten their punishment.

POINT TWO

AGENT LEONG CAN NOT TIE THE DEFENDANT-APPELLANT TO THE  
ALLEGED CONSPIRACY

Agent Lowery Leong of the F.E.A. is the government's only credible witness. He has been unable to identify the defendant-appellant as being present in the car when he set up the 'buy' with his informant. A major discrepancy arose in his testimony at the actual trial and from what he testified to under oath at the Grand Jury hearing.

Agent Leong was assigned to temporary duty in New York and when he received information that he might be able to make a 'buy' he proceeded with his informant to Chinatown on the night of May 3, 1972. He states in his testimony that while he and the informant were in the informant's car two men entered the car and discussed the sale of illicit drugs.

From his testimony at the trial it appears that Agent Leong was in the car with these two mystery men for a period of five minutes. Besides the two men Mr. Woo and Mr. Chiu were present in the car with the agent.. Based on a fleeting five minute glimpse at two individuals, who naturally being involved in an illegal operation were most likely obscuring themselves as much as possible, in dim light he remembers their faces! Oh yes, after a period of twenty-two months, while working on many other cases the agent remembers them clearly.

The identification of the defendant-appellant and his brother by Mr. Leong is specious and not very believable. First it should be pointed out that Pui Leong Lam and his brother were arrested a month later in the Eastern District case. While claiming expert

knowledge of the workings of the various anti-narcotic agencies, I must assume that the agent and his various cohorts had access to the file in this matter. It must be pointed out that the ~~case~~ in the Eastern district involved the same type of drug, so-called 'Black-Rock Heroin'. I would hope that a reasonable man involved in the investigation of narcotics would collate information.

Did Mr. Leong identify the Lam brother's at that time, less than two months after the alleged meeting, of course not, he would rather identify them from a photograph spread twenty-two months later for a Grand Jury so that they could be indicted on a separate felony charge.

Frankly, I doubt that Mr. Leong could make an accurate identification of anyone under the circumstances of the meeting. However, he calmly walks into the Grand Jury and swears under oath makes positive identification of both Lam brother's. As a result of his testimony before the Grand Jury both Pui Leong Lam and his brother Pui Kan Lam are indicted.

After his testimony before the Grand Jury, to be precise five minutes after his testimony, at the actual trial Mr. Leong decides to rectify his testimony, now on May 7, 1974, he recalls matter a little differently. No it turns out, he can't be sure that Mr. Pui Kan Lam was present in the car at the time of their rendezvous, however, he is still is sure about the presence of Mr. Pui Leong Lam in the car. In all candor I can not credit Agent Leong with more than honest zeal to make



his case stand up in open court. After twenty-two months it is difficult for anyone to remember a person that he has seen just once and for five minutes.

In anyevent Agent Leong can not testify to the fact of any conspiracy. He never saw Mr. Lam in possession of any illicit narcotics. All he had from his informant was information that perhaps he would be able to make a 'buy'. Some weeks after the event he was able to make a 'buy', however, where was the defendant=appellant? There is no doubt from the testimony that Agent Leong did indeed purchase narcotics, from whom? From the witnesses agains the defendant-appellant.

AGENT LEONG ADMITS THAT THE NARCOTICS WERE RECEIVED  
DIRECTLY FROM MR. WOO ALIAS TOK

Mr. leong states in his testimony that on the evening of May 18, 1972, a little over two weeks from the first meeting he arranged to pick up the heroin in question. He proceeded to Chinatown, and there in exchange for \$8,000., he received the heroin directly from Mr. Tok, the witness against Pui Leong Lam.

What ties the heroin to the defenant-appellant? I doubt that drug sellers have a trade mark, heroin is not a difficult substance to synthesize. How does one know that Tok or Chiu or anyone else had anything to do with its sale or distribution?

In this case the United States has chosen the actual seller to prove that Lam is the guilty party. Naturally Mr. Tok is perfectly happy to go along with the government's case, it certainly is a fortuitous event for him, now he will be able to point his finger at someone else and share the blame. To back

up the dubious Mr. Tok, they trot out Mr. Chiu another person of high esteem in society. It must be borne in mind that both of these gentlemen are very interested parties in the outcome of this case and by no means should be testimony be allowed to stand uncorroborated.

#### POINT FOUR

#### CHUN YIN CHIU AND GUAN CHOW TOK THE GOVERNMENT'S WITNESSES ARE UNBELIEVABLE

In order to tie Pui Leong Lam directly to the heroin and to the conspiracy, the United States has produced Chun Yin Chiu and Guan Chow Tok. As has been stated previously neither one of these gentlemen would win the good citizen award of the year. Mr. Chui admitted on the stand that he is a drug user, that Mr. Tok had supplied him with heroin since 1971, that he is a convicted drug felon and that he was involved in this transaction. Mr. Tok admitted on the stand that he is a drug wholesaler, that he dealt not in ounces but in pounds of heroin, that he supplied Mr. Chiu with heroin for his habit, that he is serving a term for drug felonies, that he perjured himself on the stand in a previous trial. I respectfully submit that neither one of these gentlemen can be believed, even as to the correct time of day.

There is no doubt in reading the transcript that Guan Chow Tok is the chief culprit in this case. He admits on the stand that he sold the drugs to Agent Leong. Further he sees nothing wrong with his crimes, he regrets only his incarceration, he is a completely amoral person. He will do whatever he feels is required of him to lessen his punishment and to get out of prison, if this means to testify against an innocent man, he will.



All we have in this case that Pui Leong Lam was involved is the word of this slimy character. Tok was facing an even longer prison sentence than Lam, why should he not say that the defendant-appellant was involved, after all in his mind that what he thought the Government wanted was for him to testify that Pui Leong Lam was his supplier and his conspirator in this affair.

It is necessary for caution in dealing with a felon of Mr. Tok's stripe. Precisely what did he expect in return for testimony favorable to the United States. Remember this gentlemen was already serving a seven year sentence, he faced an additional fifteen years. This is not a pleasant prospect to any person. Several inmates at West Street spoke with Mr. Tok about the case in question and he according to the testimony of the defense witness Gerald Provost, a person without a stake in the outcome of the trial told a different version of events. I respectfully submit to the Court that Guan Chow Tok was given a promise of consideration by the government for his favorable testimony

The witness Tok's entire story on the stand is unbelievable. He would have us believe that Mr. Lam approached him after a slight acquaintance and asked him if he was interested in 'Wet Stuff', in other words heroin. Did Mr. Tok as every good citizen is obligated to do, report this transaction to the authorities, of course not. Instead he decided to assist Mr. Lam in selling the illegal drugs. Now it is obvious from his testimony that Mr. Tok was already involved in drug trafficking and if Mr. Lam wanted to find a co-conspirator he had certainly come to the right place. It however, strains one's credibility to believe, that based upon a casual

relationship as described in the transcript; that Mr. Lam had once approached Mr. Tok at Mr. Tok's factory to collect a debt of \$2,000., so that a mutual friend could be bailed out of jail, that Mr. Tok would risk taking on Mr. Lam as a drug supplier.

Further in his testimony Mr. Tok, in detailing the delivery of the narcotics allegedly by the Lam's includes a brother who is in Hong Kong. He further strains credulity by asking us to believe that Mr. Lam and friends turned over the drugs to him without being paid in advance. Certainly this is an outright lie, does he expect us to believe that should he default on the payments that Mr. Lam would rush over to State Supreme Court and obtain a judgment against him? Frankly it is difficult even in a legitimate business to establish credit and in the underworld it is cash on delivery.

The other witness against Lam is another very sad case. This gentlemen had just been released from prison. As one can imagine for drug offense, of course. Chun Yin Chiu an illegal alien, a drug addict and a felon. He faced a long prison term for his involvement in the case. He testified against Lam merely to save his own neck. His testimony is important to the government only because he backs up the story told by Tok.

In his own testimony Chiu admits the fact that Tok supplied him with heroin. He admits that he testified to save his own neck. Chui denies perjuring himself, but he is not a very believable witness. Chiu is interested only in Chiu and not in justice. His testimony against the defendant-appellant must be taken in light of the consequences to himself.

POINT SIX

THE GOVERNMENT HAD GUAN CHOW TOK UNDER SURVEILLIANCE

It is obvious that after Agent Leong's meeting with Mr. Tok that the government had Mr. Tok under surveillance, since he was a suspected dealer of narcotics. At this very time the defenant-appellant was also under some type of surveillance which would lead to his arrest the next month on narcotic charges.

Why is it that the government was unable to indentify the defenant-appellant as the alleged supplier of Mr. Tok's drugs at the time they were sold?

There is simply no reason why it took the government twenty-two months to bring this case to the Grand Jury. Lam was already in custody in a similiar action in the Eastern District. The government had both men under surveillance of some sort at this time. Perhaps the goverment was holding something against the defenant=appellant to insure his cooperation a la Tok?

POINT SEVEN

THE INDICTMENT AS DRAWN IS FAULTY AND THE DEFENANT-APPELLANT  
WAS DENIED HIS CONSITUTIONAL RIGHT TO A FAIR & SPEEDY  
TRIAL

The indictment handed up against the defenant-appellant charges that he was engaged in a continuos conspiracy to violate Federal laws until August 22, 1972, however, the defenant-appellant had already been in custody of the Federal authorities from the end of June 1972. It is difficult to believe that Lam was such a super criminal that he was able to conspire with his cohorts while he was in prison.

All the facts that the government laid before the Grand Jury on March 28, 1974, were known to the government for months prior to the indictment. All the evidence was available to the government from the time of Tok's arrest, some twenty months prior to the Grand Jury. Both Lam and Chiu were in custody on unrelated matters since the case started. It is difficult to accept the government's story that they were able to proceed against Lam only after Tok decided to get everything off his chest. Furthermore it must be kept in mind that from the beginning Chiu was a government informer,

The plausible explanation for this just might be the fact that the defendant-appellant had been convicted in Eastern District of New York, for conspiracy early in January 1973. Perhaps the government thought that Pui Leong Lam and his brother could prove of assistance to them in related matters. Lam has always, of course, maintained his innocence in this case and has informed the government that he can not cooperate because he has no information. It is a slight possibility that the government decided to press this case in order to punish the Lam brother's.

#### SUMMARY

The decision of the trial court should be reversed because that court has failed to take into account the fact that the witnesses against Lam were either biased or alleged accomplices. The Federal Agent, Lowery Leong, had a vested interest in seeing the defendant-appellant Lam convicted. Both Chiu and Tok had even more compelling reasons for wanting to have Lam convicted, approximately fifteen years worth of reason, to be precise.

The government had the obligation to bring Lam to trial as soon as it had all the evidence. It had the evidence against the defendant-appellant for a period of practically two years, yet failed to bring him to trial. The only reason would seem to be harassing the defendant-appellant in order to get him to turn informer.

It was error for the indictment to charge Lam with a continuous conspiracy up to August 22, 1972, as he was in custody during part of the time and therefore it would have been impossible for him to be involved in a conspiracy to sell drugs.

In view of the above it is respectfully requested that this Court reverse the decision of the Hon. Frederick van P. Bryan and grant a new trial to defendant-appellant.

#### CONCLUSION

THE DECISION OF THE DISTRICT COURT SHOULD BE REVERSED.

Respectfully submitted

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